

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LYNN F. WALLACE }

For Appellant: Lynn F. Wallace, in pro. **per.**

For Respondent: Bruce W. Walker
Chief Counsel

David M. Hinman
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lynn F. Wallace against a proposed assessment of additional personal income tax in the amount of \$153.12 for the year 1974.

Appeal of Lynn F. Wallace

The issue presented is whether appellant qualified for head of household status in 1974.

Appellant, a California resident, was legally married throughout the entire year of 1974. She and her then husband were members of the same household through January of 1974, and thereafter separated. Appellant supported herself and her son without any financial assistance from her husband throughout that entire taxable year. On August 9, 1974, she was granted an interlocutory decree of divorce. A final judgment of dissolution was rendered in January of 1975.

On her 1974 California personal income tax return, appellant claimed head of household status. Respondent determined that she was not eligible to file as head of household and issued the proposed assessment in question.

Section 17042 of the Revenue and Taxation Code provides, in part:

For purposes of this part, an individual shall 'be considered a head of household if, and only if, such individual is not married at the close of the taxable year, ...

The phrase "not married", as it is used in that statutory provision, is defined to include "[a]n individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance" (Emphasis added.) (Rev. & Tax. Code, § 17043, subd. (b).) In addition, a person who is legally married may still be considered as not married for purposes of head of household status if during the entire taxable year such individual's spouse is not a member of the taxpayer's household. (Rev. & Tax. Code, § 17173, subd. (c) (3).)

Since appellant's spouse was a member of her household during a portion of 1974, and since she was not legally separated from him under a final decree of divorce or separate maintenance at the end of that year, she was not eligible to file as a head of household for the taxable year 1974. (See Appeal of Robert J. Evans, Cal. St. Bd. of Equal., Jan. 6, 1977; Appeal of Manciel L. Smith, Cal. St. Bd. of Equal., May 10, 1977; Appeal of Dennis M. Vore, Cal. St. Bd. of Equal., July 31, 1973.) **Consequently**, we must **sustain respondent's** action.

Appeal of Lynn F. Wallace

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lynn F. Wallace against a proposed assessment of additional personal income tax in the amount of \$153.12 for the year 1974, be and the same is hereby sustained.

Done at Sacramento, California, this 1st day of March , 1978, by the State Board of Equalization.

_____, Chairman
Philip J. O'Neil, Member
William W. Bunnell, Member
W. J. Sankey, Member
George C. Kelly, Member